IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SHAWNA BEISE, as surviving wife of decedent Ben von Hardenberg,

Plaintiff/Appellant,

v.

CAPPSCO INTERNATIONAL, INC., an Arizona corporation,

Defendant/Appellee.

SHAWNA BEISE, as surviving wife of decedent Ben von Hardenberg,

Plaintiff/Appellant,

v.

PRO-TECH AVIATION, LTD., an Arizona corporation,

Defendant/Appellee.

2 CA-CV 2006-0167
2 CA-CV 2006-0175
(Consolidated)
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil Appellate Procedure

APPEALS FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. C20052586 and C20054068

Honorable John F. Kelly, Judge
Honorable Michael O. Miller, Judge

REVERSED AND REMANDED

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E C K E R S T R O M, Presiding Judge.

¶1 Appellant Shawna Beise appeals from the dismissal of separate wrongful death actions she filed against appellees Cappsco International, Inc., and Pro-Tech Aviation, Ltd., after the death of her fiancé, Bernhard von Hardenberg. Von Hardenberg died in a helicopter crash in British Columbia on August 17, 2003, while fighting a fire, shortly after the engine had been replaced by Cappsco and/or Pro-Tech, both Arizona companies. In the Cappsco case, the trial court granted summary judgment in favor of Cappsco on the ground Beise was not von Hardenberg's surviving spouse and, therefore, not the proper party to bring a wrongful death action. Based on that ruling, the trial court in the Pro-Tech case granted Pro-Tech's motion to dismiss the complaint for lack of a proper plaintiff. Beise argues the trial court erred when it failed to recognize she was von Hardenberg's spouse under British Columbia law. Because we conclude Beise raised an issue of material fact as to whether she was von Hardenberg's common law spouse at the time of his death, we

reverse the grant of summary judgment in the Cappsco case and the dismissal of Beise's complaint in the Pro-Tech case.

¶2 We view the facts in the light most favorable to Beise, the party against whom summary judgment was granted, drawing all reasonable inferences in her favor. *See Tritschler v. Allstate Ins. Co.*, 213 Ariz. 505, ¶ 2, 144 P.3d 519, 522 (App. 2006). Beise testified at a deposition that she and von Hardenberg, both citizens of Canada and residents of British Columbia, began living together in the spring of 2001 and did so until his death in August 2003. Although Beise was employed for most of the time they lived together, von Hardenberg earned substantially more money. He paid the rent and a greater portion of their living expenses. In early 2003, Beise accompanied von Hardenberg when his employment sent him to Australia for three months. And she twice attended his family's annual camping trip with him.

¶3 According to Beise, the couple had planned to solemnize their marriage on August 31, 2003, two weeks after von Hardenberg died. He had given Beise an engagement ring in December 2002 that was also to be her wedding ring. The couple had applied for a marriage license, had ordered flowers, and had hired a caterer and photographer. Beise had gone to her physician for a preconception checkup, and the couple had been trying to conceive a child for about three months. They were planning on emigrating to Australia after their wedding because von Hardenberg had employment available there. After his death, von Hardenberg's mother and four of his five brothers signed an affidavit stating they viewed Beise as von Hardenberg's common law spouse. Beise was granted letters of

administration to probate his estate as his "common law spouse," and the workers' compensation board granted her a pension under a fairness exception because she had not met the three-year requirement for benefit eligibility as a common law spouse. Beise brought these wrongful death actions under A.R.S. §§ 12-611 and 12-612 as his surviving wife.

¶4 Although Arizona does not recognize common law marriages, "marriages valid by the laws of the place where contracted are valid in Arizona." *State v. Bailes*, 118 Ariz. 582, 585, 578 P.2d 1011, 1014 (App. 1978); *see* A.R.S. § 25-112(A); *Desjarlais v. MacDonell Estate*, [1988] 23 B.C.L.R.2d 195, ¶ 10 (acknowledging existence of common law marriage in British Columbia). In response to Cappsco's motion to dismiss the complaint, which the trial court treated as a motion for summary judgment, *see* Rule 12(c), Ariz. R. Civ. P., 16 A.R.S., Pt. 1, the court found Beise had "failed to set forth facts creating a genuine issue of material fact in dispute warranting a trial" on the issue of whether she was a common law spouse under British Columbia law.

¶5 Beise first argues the trial court erred when it failed to recognize the preclusive effect of the British Columbia probate court order and the determination of the workers' compensation board that she was von Hardenberg's common law spouse. She contends the Restatement (Second) of Judgments § 31 (1982), which governs status determinations, should preclude Cappsco from litigating her status as a common law spouse. But the trial court found that "neither the worker[s'] compensation proceeding nor the probate proceeding was for the purpose of determining the marital status of [Beise] and [v]on

Hardenberg." And, in fact, Beise conceded in her deposition that she did not appear in front of a judge nor did that court conduct a hearing of any kind before issuing the letters of administration. Because British Columbia courts require a court to consider and weigh evidence on the issue before deciding someone's status as a common law spouse, we agree with the trial court that the probate court order was not the result of a "judgment in an action whose purpose is to determine or change a person's status." Restatement (Second) of Judgments § 31(2). And the workers' compensation board found that she did not qualify for benefits under the common law spouse provision of the workers' compensation statutes, but instead awarded her benefits under a catch-all fairness exception. Therefore, the board never determined that she was von Hardenberg's common law spouse. We find no error in the trial court's ruling that the prior rulings were not binding on the determination of Beise's status in the wrongful death actions.

¶6 We apply the substantive law of British Columbia in determining whether Beise presented sufficient evidence to create a genuine issue of material fact that a common law marriage existed between her and von Hardenberg.[1] We apply Arizona law for the

[1]For the sake of simplicity and consistency with the terms used by the parties, we use the term "common law marriage" at times when referring to the relationship between von Hardenberg and Beise. However, under the law of British Columbia, that term has a more technical meaning than the way we use it here—to refer to a marriage-like relationship. *See Desjarlais v. MacDonell Estate*, [1988] 23 B.C.L.R.2d 195, ¶ 15 (defining common law marriage, in the absence of statutory authority, as one in which the parties contract to "'enter into a matrimonial relation'"), *quoting Coffin v. R.* [1955] 21 Ex. C.R. 333, 369; *see also* Estate Administration Act, R.S.B.C., ch. 122, (1996) (defining common law spouse as either "a person who is united to another person by a marriage that, although not a legal marriage, is valid by common law, or . . . a person who has lived and cohabited with another person in a marriage-like relationship . . . for a period of at least 2 years immediately before the

appropriate standard of review. *See Vandever v. Indus. Comm'n*, 148 Ariz. 373, 378, 714 P.2d 866, 871 (App. 1985); *Krisko v. John Hancock Mut. Life Ins. Co.*, 15 Ariz. App. 304, 305, 488 P.2d 509, 510 (1971). We review *de novo* a trial court's grant of summary judgment, *Schwab v. Ames Construction*, 207 Ariz. 56, ¶ 17, 83 P.3d 56, 60 (App. 2004), and will uphold it only when there are no genuine issues of material fact and when only one inference can be drawn from the undisputed facts. *State ex rel. Corbin v. Challenge, Inc.*, 151 Ariz. 20, 27, 725 P.2d 727, 734 (App. 1986).

¶7 The parliament of British Columbia has defined a "spouse" to include persons in a marriage-like relationship in several of its statutory schemes, including its Family Compensation Act, the goal of which is analogous to Arizona's wrongful death statute. *See* Family Compensation Act, R.S.B.C., ch. 126, (1996) (defining spouse to include person who "lived and cohabited with the deceased in a marriage-like relationship . . . for a period of at least 2 years"); *see also* Family Relations Act, R.S.B.C., ch. 128, (1996) (defining spouse, in part, as someone who "lived with another person in a marriage-like relationship for a period of at least 2 years"); Estate Administration Act, R.S.B.C., ch. 122, (1996) (defining spouse, in part, as "a person who has lived and cohabited with another person in a marriage-like relationship . . . for a period of at least 2 years immediately before the other person's death").

¶8 The test for determining whether a relationship is "marriage-like" in British Columbia has both a subjective and an objective component. *Gostlin v. Kergin*, [1986] 3

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other person's death").

B.C.L.R.2d 264, 267-68; *see also Takacs v. Gallo*, [1998] 48 B.C.L.R.3d 265, ¶ 55. A couple's subjective intention can be ascertained by each person's answer to the hypothetical question "if their partner were suddenly to be disabled for life, would they consider themselves committed to life-long financial and moral support of that partner?" A "yes" answer indicates a marriage-like commitment while "no" tends to show the couple is not living together as husband and wife. *Gostlin*, 3 B.C.L.R.2d at 267-68.

¶9 In *Gostlin*, the British Columbia Court of Appeals listed several objective indicators for courts to consider:

> Did the couple refer to themselves, when talking to their friends, as husband and wife, or as spouses, or in some equivalent way that recognized a long-term commitment? Did they share the legal rights to their living accommodation? Did they share their property? Did they share their finances and their bank accounts? Did they share their vacations? In short, did they share their lives? And, perhaps most important of all, did one of them surrender financial independence and become economically dependent on the other, in accordance with a mutual arrangement?

Id. at 268. Since *Gostlin*, the court has reiterated the importance of examining both the parties' intentions and the objective indicators of whether a relationship is marriage like, disapproving a trial judge's "giving undue emphasis" to one factor over others. *Takacs*, 48 B.C.L.R.3d 265, ¶¶ 55, 58.

¶10 Here, the trial court correctly enumerated several factors that could be construed against Beise in conducting the *Gostlin* analysis. But the court also overlooked evidence she produced to support other factors enumerated by the *Gostlin* court when deciding if a couple is in a marriage-like relationship: Beise and von Hardenberg not only

had lived together for two years, they took vacations together, shared their lives, and had been engaged, objective evidence they referred to themselves in a "way that recognized a long-term commitment" as well as subjective evidence of their intention to be in a long-term commitment. *Gostlin*, 3 B.C.L.R.2d at 267-68. In addition, von Hardenberg's family viewed them as common law spouses. *See id.* at 268. Finally, and most importantly, the couple's concrete, announced plan to get married, their efforts to conceive a child, and Beise's intention to relocate to Australia where von Hardenberg had secured a job, all strongly support the inference that the couple viewed their relationship, and held it out to others, as a long-term, marriage-like commitment. *See id.* at 267-68.

¶11 Moreover, the trial court erroneously concluded Beise had produced no evidence that she was financially dependent on von Hardenberg. Beise testified at her deposition that von Hardenberg had paid the rent, earned substantially more money than she did, and paid more of the living expenses than she did. She also testified that they "lumped" their finances and that she had essentially followed von Hardenberg to Australia when he had employment there. *See id.* at 268 (noting importance of economic dependence as indicator of marriage-like relationship). We conclude Beise produced evidence that, when viewed in the light most favorable to her, creates a genuine issue of material fact as to whether she was the common law spouse of von Hardenberg at the time of his death.[2]

[2]We reject Cappsco's argument that because von Hardenberg's divorce from his first wife was not final until one year before his death, he lacked the capacity to enter into a common law marriage until then, and therefore, Beise did not meet the statutory two-year requirement to be considered a common law spouse. In *Desjarlais*, the case Cappsco relies on, the court applied the requirement that a person have the capacity to enter into a common

¶12 Finally, Beise argues the trial court should not have struck the declaration of F. Ean Maxwell, an attorney in British Columbia, that she attached to her reply to Cappsco's opposition to her motion for summary judgment. The trial court granted Cappsco's motion to strike the declaration "[f]or all of the reasons stated in defendant's motion." Because the declaration was struck in the context of, and based on the rules governing summary judgment, and because we are reversing the summary judgment, we need not decide whether the trial court erred in striking the declaration.

¶13 Reversed and remanded.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge

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law marriage only to the first prong of the Estate Administration Act's definition of common law spouse, which is not the definition at issue here. 23 B.C.L.R.2d 195, ¶¶ 8, 13; *see* Estate Administration Act, R.S.B.C., ch. 122, (1996) (defining common law spouse as either "a person who is united to another person by a marriage that, although not a legal marriage, is valid by common law, or . . . a person who has lived and cohabited with another person in a marriage-like relationship . . . for a period of at least 2 years immediately before the other person's death"). The court did not apply the requirement to the "marriage-like relationship" prong; therefore, we refuse to read such a requirement into the statute.